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Auditor-General for Australia



11 March 2022

Ms Lucy Wicks MP
Chair
Joint Committee of Public Accounts and Audit

By email: jcpaa@aph.gov.au

Dear Ms Wicks

Additional ANAO submission — Governance in the stewardship of public resources: Inquiry into Auditor-General's Reports 11, 31, 39 (2019-20) and 2 and 9 (2020-21)

I am writing to provide the Joint Committee of Public Accounts and Audit with an additional Australian National Audit Office (ANAO) submission to the above inquiry. The additional submission, which is attached, has been prepared following receipt of the committee's invitation to do so on 14 February 2022.

The additional ANAO submission provides information relating to matters raised in submission 13 to the inquiry, which is dated 30 December 2021 and was placed on the committee's website on 14 January 2022. Submission 13 principally relates to Auditor-General Report No.9 of 2020–21 *Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport*, which was presented for tabling on 21 September 2020, and information on this performance audit subsequently provided to the Parliament by the ANAO.

As discussed in the additional submission, the ANAO has considered the audit conclusion and findings in that performance audit report, evidence collected in the course of the audit, the conduct of the audit engagement, and the ANAO's related evidence to the Parliament since the audit was tabled, in light of the contents of submission 13.

The ANAO continues to be of the view that the audit conclusion and findings in the audit report are appropriate and formed in accordance with the ANAO Auditing Standards, that the audit engagement was conducted in accordance with the *Auditor-General Act 1997* and the ANAO Auditing Standards and procedures, and that the ANAO's related evidence to Parliament is accurate.

I trust the additional submission is of assistance to the committee.

Yours sincerely

A black rectangular box redacting the signature of Grant Hehir.

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Joint Committee of Public Accounts and Audit

Governance in the stewardship of public resources: Inquiry into Auditor-General's Reports 11, 31, 39 (2019–20) and 2 and 9 (2020–21)

Additional submission by the Australian National Audit Office (ANAO)

1. On 14 February 2022 the Joint Committee of Public Accounts and Audit (JCPAA) invited the ANAO to consider making a submission in relation to the content of 'submission 13' to the above inquiry, which the JCPAA had published on the inquiry's webpage that day. Submission 13 had been made 'to inform the committee's inquiry into the Auditor-General's performance audit of the Leppington Triangle acquisition'¹, which is Auditor-General Report No. 9 of 2020–21.²
2. The ANAO has considered the audit conclusion and findings in Auditor-General Report No. 9 of 2020–21, evidence collected in the course of the audit, the conduct of the audit engagement, and the ANAO's related evidence to the Parliament since that audit was tabled, in light of the contents of submission 13.
3. The ANAO continues to be of the view that the audit conclusion and findings in Auditor-General Report No. 9 of 2020–21 are appropriate and formed in accordance with the ANAO Auditing Standards, that the audit engagement was conducted in accordance with the *Auditor-General Act 1997* and the ANAO Auditing Standards and procedures, and that the ANAO's related evidence to Parliament is accurate.
4. The ANAO also notes that the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure or the department), which was the audited entity, had a number of opportunities to consider the ANAO's evidence base and correct any misinterpretation or errors of fact during the audit, consistent with the *Auditor-General Act 1997* and ANAO processes for performance audits. In accordance with subsection 19(8) of the *Auditor-General Act 1997* the department's letter of formal response to the proposed report was included in Auditor-General Report No. 9 of 2020–21 at Appendix 1.
5. The basis for the ANAO's position is set out below.

Background information on performance audits

What is a performance audit?

6. ANAO performance audits are conducted under the *Auditor-General Act 1997* and in accordance with specified auditing standards.
7. A performance audit is an independent and objective assessment of any aspect of the operations of an entity. Performance audits may involve multiple entities and examine common aspects of administration or the joint administration of a program or service.³ Through this activity, the ANAO reports to the Parliament on areas where improvements can be made to aspects of public

¹ 'Name Withheld', submission 13 to the JCPAA relating to: Governance in the stewardship of public resources: Inquiry into Auditor-General's Reports 11, 31, 39 (2019–20) and 2 and 9 (2020–21), p. 1.

² Auditor-General Report No. 9 of 2020–21, *Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport*, available from the ANAO website at www.anao.gov.au.

³ See the following parts of the *Auditor-General Act 1997*: definition of performance audit (section 5), independence of the Auditor-General (section 8), and the performance audit function (Part 4 Division 2, which covers the types of performance audits and processes relating to them).

administration and makes specific recommendations to assist public sector entities to improve performance.

ANAO Auditing Standards

8. The ANAO conducts performance audits in accordance with the ANAO Auditing Standards, which are legislative instruments made under the *Auditor-General Act 1997*. For performance audits the ANAO Auditing Standards comprise the Standard on Assurance Engagements, ASAE 3500 *Performance Engagements* (ASAE 3500), issued on 5 October 2017 by the AUASB⁴, and the reporting requirements of the International Standard of Supreme Audit Institutions, ISSAI 3000 *Standard for Performance Auditing*, endorsed in 2016 by the International Organisation of Supreme Audit Institutions (INTOSAI).⁵
9. Under the ANAO Auditing Standards a performance audit provides 'reasonable assurance', which is a high, but not absolute, level of assurance⁶ where the auditor has reduced the risk of providing an incorrect conclusion to an acceptably low level in the circumstances of the audit.⁷ In a performance audit the conclusion is expressed on the outcome of the evaluation of the audited activity against identified criteria. The ANAO Auditing Standards contain mandatory requirements relating to ethical requirements, quality control, professional scepticism and professional judgement as well as planning, performing and reporting on an audit. This includes obtaining and evaluating evidence to form a conclusion.
10. The ANAO Audit Manual⁸ complements the mandatory requirements of the ANAO Auditing Standards and relevant legislation. The manual is issued under the authority of the Auditor-General. It sets ANAO policies and provides guidance applying to the audits and other assurance work performed by, or on behalf of, the Auditor-General, and is consistent with the ANAO Auditing Standards. It is reviewed annually and is subject to the oversight of the ANAO Quality Committee.

The performance audit process

11. Performance audits by their nature involve engagement between the ANAO and the audited entity and as necessary, other stakeholders involved in the program or activity being audited.
12. The main phases of a performance audit are audit planning, evidence gathering and analysis, and reporting.

Planning

13. The first phase of the audit process involves planning the audit, including defining the audit objective, scope and audit criteria. This phase generally involves a brief review of information relating to the program or activity to be audited and consultation with the relevant entity or entities. There may also be discussion with key stakeholders.
14. Once the audit has been approved by the Auditor-General, the audited entity or entities are formally designated as part of the audit. An entry interview is arranged with the senior officials of each designated entity or entities to discuss the audit scope and objective, and to formally commence the

⁴ With the exception of paragraphs 33, 34 and 45 relating to understanding internal controls, non-compliance with laws and regulations and assurance report content.

⁵ Paragraphs 116, 122, 124 and 126.

⁶ Australian Auditing Standard ASQC1 *Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements*, paragraph 12(p).

⁷ ASAE 3500 16(q).

⁸ Available at: <https://www.anao.gov.au/work/audit-manual>.

audit activities, including setting out the schedule for the audit and the ANAO's information requirements. Each designated entity decides on its representation at its entry interview.

Evidence gathering and analysis

15. In the second phase of the audit, the ANAO gathers and analyses the evidence necessary for it to draw a conclusion on the audit objective in accordance with the ANAO Auditing Standards. This will include gathering documentation and may include conducting meetings with the responsible managers and staff from the audited entity or entities, as well as from other stakeholders relevant to the audit topic.
16. The ANAO's approach is to engage with entity management and personnel directly responsible for the audited activity at the time of the audit, as government administration is ongoing, notwithstanding the movement, departure or absences of individuals. Although meetings may provide important information and context, enquiry alone ordinarily does not provide sufficient audit evidence to form a conclusion.⁹
17. It is important to note that an auditor's role is to review existing contemporaneous evidence held by an entity. The audited entity is responsible for providing evidence to the auditor. Audit evidence in documentary form, whether paper, electronic, or other medium, is more reliable than evidence obtained orally (for example, a contemporaneously written record of a meeting is more reliable than a subsequent oral representation of the matters discussed).¹⁰
18. Fundamental to the concept of independence is that the auditor does not review its own work or create evidence to be audited. For example, in instances where the valuation of an asset of the entity is being audited, the entity is responsible for producing that valuation for the auditor to consider as audit evidence. The auditor would not undertake its own valuation of the asset. *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information* states at paragraph 54:

If information to be used as evidence has been prepared using the work of a responsible party's or a measurer's or evaluator's expert, the assurance practitioner shall, to the extent necessary having regard to the significance of that expert's work for the assurance practitioner's purposes: (a) Evaluate the competence, capabilities and objectivity of that expert; (b) Obtain an understanding of the work of that expert; and (c) Evaluate the appropriateness of that expert's work as evidence.
19. There is an expectation that audited entities will cooperate with the ANAO, and this is supported by legislation. Section 33 of the *Auditor-General Act 1997* (the Act) provides for access to premises and documents. Section 32 of the Act enables the Auditor-General to direct persons, by written notice, to provide information, give evidence or provide documents. These coercive section 32 powers are used infrequently — principally where an entity seeks legal comfort due to the possible operation of secrecy provisions in other legislation, or if there is no other available means to secure information that is material to forming an audit conclusion.¹¹ The latter situation is rare, as the ANAO generally receives a high level of entity cooperation, can cross-check information received from different sources, and employs a variety of tools to access and search entity ICT systems.
20. Members of the public are also invited, via the ANAO website, to contribute information to performance audits.

Reporting

21. Report preparation papers (RPPs) are prepared by the ANAO once the majority of the evidence has been collected and fieldwork has concluded. RPPs outline the evidence base relied upon, preliminary audit findings, conclusions and potential audit recommendations. The RPPs are not required to be

⁹ Australian Auditing Standard ASA 500 *Audit Evidence*, paragraph A6.

¹⁰ *Ibid.*, paragraph A35.

¹¹ The extent of the evidence obtained and audit work performed must be sufficient to support the audit findings and to conclude against the audit objective in accordance with the ANAO Auditing Standards.

issued under legislation but are shared with the audited entity or entities. The RPPs provide entities with an opportunity to consider and discuss the audit findings, provide feedback to the audit team (including additional context), correct any errors of fact, advise on any issues relating to the use of sensitive information, and provide any other information if required. Entities are generally provided 10 working days to give the ANAO a written response if they wish to do so.

22. It is not unusual for entities to make available additional relevant information after they have had an opportunity to review the RPPs and consider the issues emerging in the audit based on the evidence. Evidence gathering can therefore continue into the reporting phase.
23. Given the confidentiality of the audit process¹², the Auditor-General provides consent for the RPPs to be shared with relevant entity officials, to assist the entity in responding to the RPPs, and with the audit committee, to assist in identifying and advising on entity risks. The accountable authority has discretion in this matter and may share the RPPs in whole or in part with the audit committee and any entity officials they select.
24. An exit interview is held with senior entity staff, usually following the ANAO's receipt of the entity's response to RPPs. During the exit interview, the preliminary audit findings, potential conclusions and proposed recommendations are discussed. The entity continues to have the opportunity to provide further documentation and information relevant to the audit findings. As with the entry interview, each designated entity decides on its representation at its exit interview.
25. After considering the response to the RPPs and any further information or evidence provided by the audited entity or entities, the proposed report is drafted and sent to the accountable authority, as required by section 19 of the *Auditor-General Act 1997*.
26. In some circumstances, it may not be appropriate to provide each accountable authority with the whole of the proposed report, and the Auditor-General has discretion under the *Auditor-General Act 1997* to provide extracts of the proposed report that relate specifically to their involvement in the activity being audited. The Auditor-General also has discretion to provide proposed report extracts to other stakeholders, generally non-government entities with a special interest in some aspect of the proposed report.
27. The accountable authority or delegate is expected to respond on behalf of the entity as a whole, and to have weighed up all relevant considerations and risks relating to the entity. It is not uncommon for the accountable authority to inform the Auditor-General, in the formal response, of any reviews, inquiries or investigations initiated by the accountable authority to manage entity risks identified in the course of an audit.
28. All written comments received within 28 calendar days of the proposed report being provided for review, are considered in preparing the final audit report. All formal comments received within the 28 days are included in the final report. The accountable authority will also formally indicate a response to recommendations made in the audit report.
29. Under the *Auditor-General Act 1997*, the report must be presented for tabling in the Parliament as soon as practicable after completion of the audit, including during non-sitting periods.

¹² Section 36 of the *Auditor-General Act 1997* establishes audit-related confidentiality obligations.

Auditor-General Report No. 9 of 2020–21 *Purchase of the 'Leppington Triangle' Land for the Future Development of Western Sydney Airport*

Decision to undertake the performance audit

31. In conducting the 2018–19 financial statements audit of the then Department of Infrastructure, Transport, Cities and Regional Development (Infrastructure or the department), the ANAO identified a significant decrease in the reported value of land held by the department, primarily related to the value of a parcel of land referred to as the 'Leppington Triangle'. The department had purchased the land for \$29.8 million on 31 July 2018. For financial reporting purposes at 30 June 2019, the department valued the land at \$3.1 million.¹³
32. Given the difference in the valuation amounts, in the course of the financial statements audit the ANAO raised this with the department as a 'significant and unusual transaction', as required by the Australian Auditing Standards.¹⁴ The ANAO also discussed its concerns with the department's Financial Statements Subcommittee and Audit and Risk Committee.¹⁵
33. While the ANAO undertook further audit procedures as part of the financial statement audit, it was unable to conclude on key aspects of the transaction based on the information provided to it by the department. In the context of the financial statements, the ANAO recommended that the department undertake a review of the acquisition process to determine if integrity and probity were maintained during the process, particularly in light of the later valuations obtained for the preparation of the financial statements noting the significant difference in value.¹⁶ The department advised the ANAO on 18 October 2019 that 'a review of the transaction process' had been undertaken and that 'the department remains satisfied that the transaction was settled appropriately and that appropriate standards of probity and integrity were maintained'.¹⁷
34. The ANAO was not assured by the information provided by the department to the ANAO over the period July to October 2019, that the department had exercised appropriate due diligence in its acquisition of the land. The ANAO concluded that a performance audit of the transaction was warranted. The department was notified on 6 November 2019 that the Auditor-General had decided to conduct a performance audit in respect of the department's due diligence in its acquisition process.¹⁸

Objective of the audit

35. The objective of the audit was to examine whether the Department of Infrastructure had exercised appropriate due diligence in its acquisition of the Leppington Triangle land for the future development of the Western Sydney Airport. To form a conclusion against this audit objective, the following high-level criteria were applied:
 - Was an appropriate acquisition strategy developed?
 - Was an appropriate approach taken to valuing the land?
 - Were decision-makers appropriately advised?¹⁹

¹³ Auditor-General Report No. 9 of 2020–21, paragraphs 1.2 and 4.63–4.64.

¹⁴ Auditor-General Report No. 9 of 2020–21, paragraph 1.2 and paragraphs 4.68–4.69.

¹⁵ Auditor-General Report No. 9 of 2020–21, paragraph 4.71.

¹⁶ Auditor-General Report No. 9 of 2020–21, paragraph 4.68.

¹⁷ Auditor-General Report No. 9 of 2020–21, paragraph 4.72.

¹⁸ Auditor-General Report No. 9 of 2020–21, paragraph 4.73.

¹⁹ Auditor-General Report No. 9 of 2020–21, paragraphs 4–5.

Evidence gathering and analysis

36. The audit followed the approach outlined above in paragraphs 15 to 20 to gather and analyse audit evidence. The performance audit fieldwork stage largely commenced on 16 January 2020, when the audit manager met with two of the department's Western Sydney Unit staff nominated by the department and obtained access to the department's systems. Coinciding with the first wave of the COVID-19 pandemic, fieldwork thereafter was conducted by email, telephone and remote access to the department's systems.
37. The entry interview of 20 November 2019, and the exit interview of 14 July 2020, were face-to-face meetings held at Infrastructure's premises. As per standard practice, the department decided which of its staff attended each meeting. Among the departmental attendees were:
- one of the key officers involved in the land acquisition. This officer attended the entry interview and later contributed to the department's response to the Report Preparation Papers, which were discussed at the exit interview²⁰;
 - an officer who had been involved in the department's post-acquisition review of the land transaction process. This officer attended the entry interview; and
 - a different officer who had also been involved in the department's post-acquisition review. This officer attended the exit interview.
38. The performance audit considered evidence gathered as part of the financial statements audit process, which had included discussions between ANAO financial statements auditors and departmental officials involved in the acquisition process and in the department's financial reporting of the transaction. The performance audit also involved the further collection and examination of relevant departmental records and liaison by the ANAO with key staff within the department that were involved in the administration and/or review of the process that was the subject of the performance audit. This included consideration of: responses to ANAO requests for information, documents maintained in departmental electronic filing systems, advice to government, and the departmental email accounts of 14 officers.²¹
39. As noted at paragraph 17, documentary evidence is more reliable than oral evidence. Given that evidence provided in the course of the financial statements audit was found to be unreliable, the primary focus of staff liaison during the performance audit's fieldwork stage was on gathering documentary evidence contemporaneous with the land acquisition and ensuring that all available departmental evidence had been obtained by the ANAO.
40. Infrastructure advised Parliament that 'the Department and ANAO communicated regularly through the course of the ANAO's audit of the Department's 2018–19 financial statements and the subsequent ANAO performance audit of the purchase of the Leppington Triangle'.²²
41. The performance audit fieldwork also involved engagement with other entities, such as the Department of Finance, Transport for NSW and a firm that Infrastructure had engaged to value the Leppington Triangle (M J Davis Valuations Pty Ltd).²³
42. Prior to finalising the Report Preparation Papers (RPPs), the Auditor-General considered whether there was a need to undertake further meetings or to use the power provided by section 32 of the *Auditor-General Act 1997* to direct key officials involved in the land acquisition to give evidence, as a number of matters remained unexplained at this stage of the audit. As discussed in paragraph 19,

²⁰ Australian National Audit Office, answer to question number 46, Budget Estimates 2021–22, Senate Finance and Public Administration Legislation Committee.

²¹ Auditor-General Report No. 9 of 2020–21, paragraph 1.7.

²² Department of Infrastructure, Transport, Regional Development and Communications, answer to question number 118, Budget Estimates 2020–21, Rural and Regional Affairs and Transport Legislation Committee.

²³ Auditor-General Report No. 9 of 2020–21, paragraphs 29 and 1.8.

section 32 powers are coercive and rarely used by the ANAO. It was decided to reconsider whether this action was needed after the ANAO had received the responses to the RPPs. As discussed in paragraphs 21 and 22, it is not unusual for an entity to make available additional relevant information after it has had an opportunity to review the RPPs.

43. The Auditor-General ultimately decided not to conduct section 32 interviews or hold further meetings, and decided to proceed to issue the section 19 proposed report. Important factors in the decision not to conduct section 32 interviews were the following.
- The extent of the evidence obtained and audit work performed was sufficient to support the audit findings and to conclude against the audit objective in accordance with the ANAO Auditing Standards.
 - The information found during the course of the performance audit that remained unexplained was suggestive that the Commonwealth may have been defrauded. The ANAO is not an investigative body and does not investigate matters of suspected corruption, fraud or misconduct. Consideration was therefore given to disclosing information on this transaction to the Australian Federal Police (AFP).
 - Any potential benefits to the audit did not outweigh the risk that interviewing further officials at this time may negatively impact a potential investigation by a relevant body.²⁴
44. It is important to recognise that Auditor-General Report No. 9 of 2020–21 did not suggest or conclude that the Commonwealth may have been defrauded. Subsection 36(2) of the *Auditor-General Act 1997* enables the Auditor-General to disclose information to the Commissioner of the AFP if the Auditor-General is of the opinion that the disclosure is in the public interest.
45. In this instance, where the information that remained unexplained was suggestive that the Commonwealth may have been defrauded, the Auditor-General was of the opinion that disclosing information to the AFP Commissioner was in the public interest. The disclosure was consistent with the requirements of subsections 36(1) and 36(2) of the *Auditor-General Act 1997* and comprised information obtained in the course of performing an Auditor-General function. Disclosure was made by correspondence with the Commissioner of the AFP dated 10 July 2020 and meetings held subsequently between ANAO and AFP officials.²⁵
46. Auditor-General Report No. 9 of 2020–21 stated at paragraph 3.20 that: 'The ANAO's findings on probity management throughout this report are directed at the Department of Infrastructure'.

Land valuations

47. The objective of this particular performance audit was focused on examining the due diligence conducted by the department in acquiring the Leppington Triangle, based on the records held by the department. The ANAO did not seek to re-perform this due diligence for the reasons outlined at paragraph 18.

²⁴ This has been a relevant consideration in a number of performance audits, including Auditor-General Report No.1 of 2021–22 *Defence's Administration of Enabling Services — Enterprise Resource Planning Program: Tranche 1*. As discussed in paragraphs 3.67 to 3.87 of that report, the ANAO brought a number of probity matters to the attention of Defence's Audit and Fraud Control Division in the course of the audit.

²⁵ The existence of an investigation by the Australian Federal Police was reported in the media on 16 October 2020 and was part of evidence given by the Department of Infrastructure on 19 October 2020 in the Estimates hearing of the Rural and Regional Affairs and Transport Legislation Committee. Subsequent ANAO testimony on the reasons for contacting the AFP and the information made available to the AFP is at pages 151–153, Official Committee Hansard, 19 October 2020, Senate Finance and Public Administration Legislation Committee.

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48. Accordingly, the ANAO gathered and reviewed the relevant land valuations that were in the department's records. These included:
- the 'restricted assessment' valuation report the department procured from M J Davis Valuations to inform the purchase price²⁶;
 - eight other valuations of the Leppington Triangle land²⁷;
 - a valuation report of land held by the department, including of seven parcels of land 10–12 hectares in size within a 3km radius of the 12.26 hectare Leppington Triangle²⁸; and
 - five valuation reports for potential land acquisitions for the expansion of another airport.²⁹

Legal and town planning advice

49. The ANAO gathered and analysed the advice the department had obtained from the Australian Government Solicitor (AGS) in connection with the land acquisition. AGS was engaged by Infrastructure to provide legal advice in connection with the preparation, negotiation and execution of land transaction documents such as the contract for the Commonwealth's purchase of the Leppington Triangle land. This included consideration of any legal advice in the records of the Leppington Triangle acquisition that referred to case law or to the court proceedings and decisions relating to a previous acquisition from the landowner.³⁰ The ANAO also referred to AGS guidance materials on land acquisition matters.³¹
50. It would be highly unusual for the ANAO to obtain its own legal advice on the actions undertaken by the department, or to interview the preparers of legal advice in the audit context, as it is the department's role to seek its own legal advice.
51. The town planning report attached to submission 13 post-dates the audit and was therefore not in the department's records. This town planning report was procured for a purpose other than to inform the purchase of the land that was the subject of the ANAO performance audit. It was based on assumptions, such as a single runway instead of a two runway airport being proposed³², which were not considerations that the evidence supports were taken into account by the department when deciding on its approach to acquisition.

Reporting

52. In line with the process outlined in paragraphs 21 to 23, the ANAO Report Preparation Papers (RPPs) were sent to the Secretary of the Department of Infrastructure (the Secretary) on 23 June 2020. The Auditor-General provided consent to the Secretary to share the RPPs with relevant entity officials and with Infrastructure's Audit and Risk Committee. A written response was received from the department on 14 July 2020.
53. Extracts of the RPPs were sent to Transport for NSW and M J Davis Valuations Pty Ltd.³³ While there was engagement with those entities, including discussions with M J Davis, no written response was received from these entities.

²⁶ Auditor-General Report No. 9 of 2020–21, paragraph 3.71.

²⁷ Auditor-General Report No. 9 of 2020–21, paragraph 4.82.

²⁸ Auditor-General Report No. 9 of 2020–21, Table 4.1 on page 68.

²⁹ Auditor-General Report No. 9 of 2020–21, paragraph 3.63.

³⁰ Auditor-General Report No. 9 of 2020–21, paragraphs 2.9–2.13.

³¹ Australian National Audit Office, answer to question number 48, Budget Estimates 2021–22, Senate Finance and Public Administration Legislation Committee.

³² The Leppington Triangle lies close to the end of the proposed second runway as set out in the Western Sydney Airport Plan, December 2016, see Auditor-General Report No. 9 of 2020–21, paragraph 2.6 and Figure 2.1.

³³ Auditor-General Report No. 9 of 2020–21, paragraphs 29 and 1.8.

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54. The proposed audit report, known as the section 19 proposed report (see paragraphs 25 to 28 above), was sent to the Secretary on 4 August 2020. The Secretary was able to provide the report to any officer of the department that could assist with preparing the department's response. The Auditor-General also proactively gave the Secretary written consent to the confidential disclosure of the section 19 proposed report to a key senior officer involved in the purchase who was no longer working in the department, to assist in preparing comments on the report.³⁴
55. Extracts of the section 19 proposed report were provided to the Department of Finance, Transport for NSW, the Leppington Pastoral Company, Landrum & Brown, M J Davis Valuations Pty Ltd and the former Secretary of the then Department of Infrastructure, Transport, Cities and Regional Development.³⁵
56. Letters of formal response were received from the Department of Infrastructure, the Department of Finance, Transport for NSW and Landrum & Brown. Each of these responses was included in full in Appendix 1 of the report presented for tabling. The Department of Infrastructure agreed to all recommendations.
57. As discussed in paragraph 27, the accountable authority is expected to respond to the section 19 proposed report on behalf of the entity as a whole and to have weighed up all relevant considerations and risks relating to the entity.
58. The performance audit report was presented for tabling in the Parliament on 21 September 2020.

Conclusion against the audit objective

59. The audit conclusion in Auditor-General Report No. 9 of 2020–21 was:³⁶

6. The Department of Infrastructure did not exercise appropriate due diligence in its acquisition of the Leppington Triangle land for the future development of the Western Sydney Airport. In the course of this audit it became clear that aspects of the operations of the department, both during and after the acquisition, fell short of ethical standards.

7. An appropriate acquisition strategy was not developed. While a strategy was documented and approved:

- it was focussed on incentivising an unwilling seller to dispose of their land some 32 years in advance of when it was anticipated to be needed for the airport expansion, an approach at odds with the department asserting that early purchase allowed it to capitalise on 'goodwill' from the landowner;
- the underlying analysis overstated the identified benefits, did not quantify costs and did not address risks; and
- the acquisition approach eventually employed departed from the approved strategy.

8. The approach taken by the Department of Infrastructure to valuing the Leppington Triangle was not appropriate. The approach inflated the value of the land, which in turn led to the Australian Government paying more than was proper in the circumstances.

9. Decision-makers were not appropriately advised on the land acquisition. Formal briefings omitted relevant information, such as: the purchase price; that the price exceeded all known market valuations of the land (see Figure S.1); and the method of acquisition. Advice from the department on value for money was inadequate and unreliable. Decision-maker approval was not evident for some of the actions taken. A subsequent departmental review of the acquisition process lacked rigour and did not provide a reasonable basis for concluding that the transaction was settled for an appropriate value.

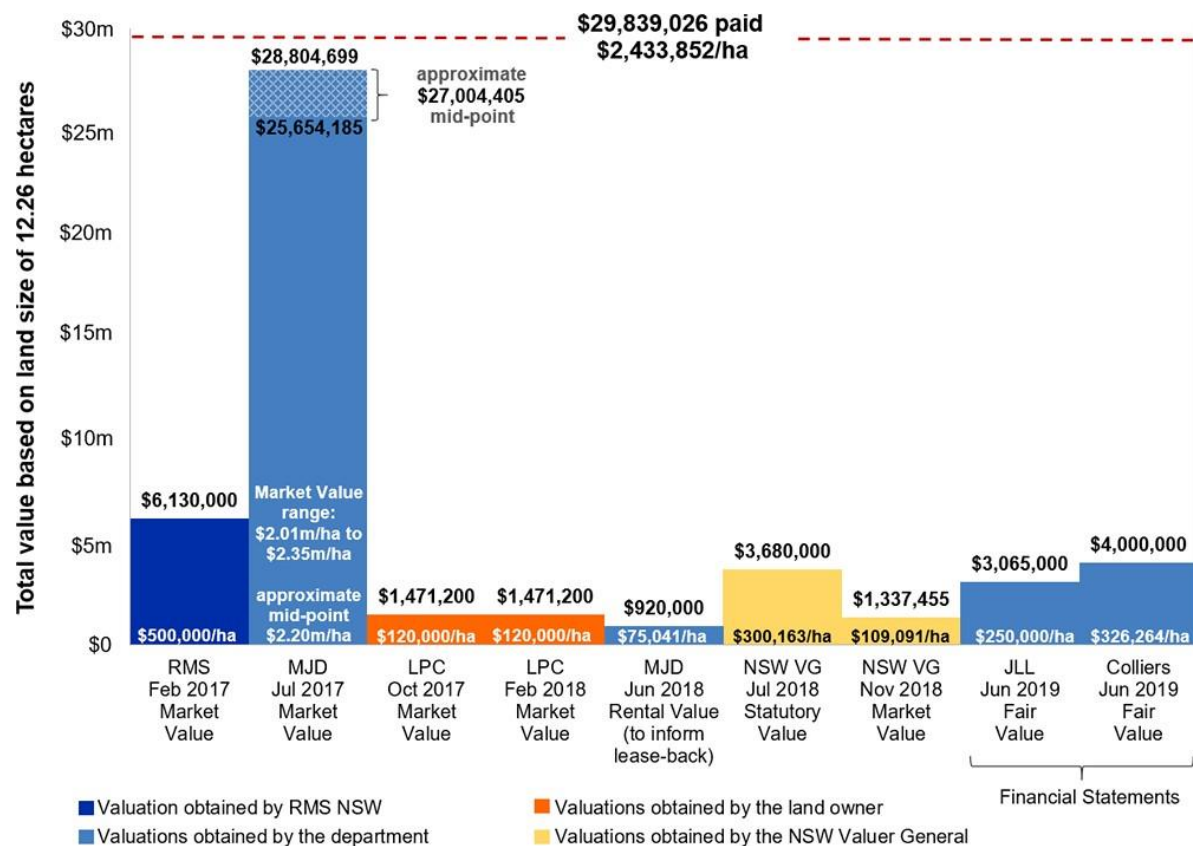
³⁴ Australian National Audit Office, answer to question number 46, Budget Estimates 2021–22, Senate Finance and Public Administration Legislation Committee.

³⁵ Auditor-General Report No. 9 of 2020–21, paragraph 29.

³⁶ Auditor-General Report No. 9 of 2020–21, paragraphs 6–10 and Figure S.1.

10. The incomplete advice provided to decision-makers, and the inadequate response by the department when questions were raised by the ANAO, was inconsistent with effective and ethical stewardship of public resources.

Figure S.1: Comparison of the price paid against nine valuations of the land



Source: ANAO analysis of Department of Infrastructure records.

Focus of remainder of submission

60. The remainder of this ANAO submission focuses on the elements of the audit conclusion and supporting findings most relevant to the content of submission 13. At times this includes clarifying, for the assistance of the JCPAA, audit findings that the ANAO has not made, where a reading of submission 13 may indicate otherwise. This ANAO submission therefore covers a sub-set of the basis on which the ANAO formed a conclusion against the audit objective³⁷.

Approach to determining acquisition amount

61. Two methods of acquisition were available for selection by the department under the *Lands Acquisition Act 1989*, being to acquire the Leppington Triangle by compulsory process or by agreement. As set out in Auditor-General Report No. 9 of 2020–21³⁸, after approval was given within the department to progress an acquisition by compulsory process, the approach was changed without further documented approval, to be an acquisition by agreement with the owner.³⁹

³⁷ For example it does not cover the evidence and findings which support the element of the conclusion that “In the course of this audit it became clear that aspects of the operations of the department, both during and after the acquisition, fell short of ethical standards.”

³⁸ Auditor-General Report No. 9 of 2020–21, paragraphs 2.68 to 2.77.

³⁹ Auditor-General Report No. 9 of 2020–21, paragraphs 4.6 to 4.8.

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62. The Leppington Triangle land was then acquired under the acquisition by agreement provisions of the Act.⁴⁰
63. Paragraphs 4.51 to 4.55 of the audit report outline that the department's \$31.78 million estimate for the cost of acquiring the Leppington Triangle, which was used in the project budget and was the upper limit approved by the financial delegate in March 2018, was arrived at by the department doubling, without explanation, the per hectare price for two property sales in the neighbouring suburb of Badgerys Creek. In addition, rather than obtaining a full valuation of the Leppington Triangle, the department then obtained a Restricted Assessment to inform the acquisition.⁴¹ This was clearly explained in the valuation report (and quoted in the Auditor-General Report) as follows:

In providing the Restricted Assessment instruction both LPC and the Commonwealth are assumed to agree and accept the commercial risks inherent in relying upon a Restricted Assessment. In utilising this service, the client agrees to waive the requirement for many of the processes that a Valuer would undertake in carrying out a full valuation of a property.

A Restricted Assessment is a qualified opinion of value of a property provided in accordance with these instructions and critical assumptions, in response to a specific instruction by the client not to carry out the usual enquiries and investigations associated with a market valuation ...⁴²

64. The valuation instructions had been subjected to amendments between February and August 2017 such that:
- in the first version the valuer was to 'assess the current market value of the Leppington Triangle sold by a willing but not anxious seller to a willing but not anxious buyer, having regard to the highest and best use that may be undertaken on the Leppington Triangle'⁴³; while
 - in the sixth version the valuer was to 'provide a market valuation of the land on an Englobo rate per square metre basis based upon existing planning parameters with highest and best use reflected in speculative industrial re-zoning potential within the Western Sydney Priority Growth Area (WSPGA) and Western Sydney Employment Area (WSEA)'.⁴⁴ This was the approach outlined in the final 'restricted assessment' valuation report.
65. The valuer specifically brought to the department's attention that there was a risk that the instructions being given to the valuer were likely to inflate the valuation, including⁴⁵:

the revised instruction sits far outside typical valuation methodology given we are being instructed to assess what is essentially a Future Value that would be only available 10 years from now, and does not reflect the typical IVSC Definition of Market Value nor current Acquisition principles either within Land Acquisition (Just Terms Compensation) Act 1991 or transactions undertaken outside of JTC Legislation ...

⁴⁰ Auditor-General Report No. 9 of 2020–21, paragraph 4.5.

⁴¹ Auditor-General Report No. 9 of 2020–21, paragraph 19.

⁴² Auditor-General Report No. 9 of 2020–21, paragraph 3.24. The quote also appears in the FOI 22-114 version of the valuation report at paragraphs 2.1.2–2.1.3 on page 5. Similar comments also appear in paragraphs 3.70 and 3.71 of Auditor-General Report No. 9 of 2020–21.

⁴³ This reflects the meaning of 'market value' in the *Lands Acquisition Act 1989*, which is 'the amount that would have been paid for the interest if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer' (section 56 of the *Lands Acquisition Act 1989*, also quoted in Auditor-General Report No. 9 of 2020–21, paragraph 3.28.)

⁴⁴ Auditor-General Report No. 9 of 2020–21, paragraph 3.31 and Table 3.1. The final instruction also appears on page 3 of the redacted copy of the valuation report the Department of Infrastructure has released under the *Freedom of Information Act 1982* (disclosure date 14 January 2022, FOI 22-114) at <https://www.infrastructure.gov.au/sites/default/files/documents/foi-22-114-mj-davis-report-redacted.pdf>.

⁴⁵ Auditor-General Report No. 9 of 2020–21, paragraphs 3.32–3.34.

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Notably we are also looking at a figure which would be *significantly* higher than current land prices being achieved for property with speculative industrial re-zoning ... *[emphasis as per original]*

66. The result was that the Leppington Triangle acquisition price was not informed by a single point value in accordance with the definition of Market Value.⁴⁶ The resulting 'restricted valuation' was that the value of the whole 13.62 hectare parcel of land would likely fall within the range of \$28.5 million – \$32 million, should a fully researched valuation be undertaken (which did not happen).⁴⁷
67. Section 15 of the *Public Governance, Performance and Accountability Act 2013* establishes the duty of the accountable authority to govern the entity in a way that promotes the proper use and management of public resources. 'Proper' is defined in the Act as efficient, effective, economical and ethical use.⁴⁸ The ANAO concluded that the approach taken by the department led to the Australian Government paying more for the land than was proper in the circumstances.
68. Auditor-General Report No. 9 of 2020–21 and the ANAO's subsequent evidence to Parliament does not state or imply a price that should have been paid for the Leppington Triangle land.
69. Of the whole 13.62 hectare Leppington Triangle, the Australian Government acquired 12.26 hectares and the NSW Government acquired 1.363 hectares. The NSW Government also acquired two other parcels of land from the same landowner at this time.
70. The Department of Infrastructure used the results of its 'Restricted Assessment' valuation report as the starting point for calculating the amount it would pay. If the department had used the 'Speculative Industrial Re-zoning Rate' adopted in the report, then 12.26 hectares would equal \$27,004,405. It did not do this and the approach the department took instead led to the Australian Government paying \$2,834,623 more than this figure.
71. The department started with the \$30 million figure applicable to the whole parcel of land drawn from the Restricted Assessment valuation. Specifically, the department's calculation of the price was:
- \$30,000,000 for 13.62 hectares; minus
- \$160,974 for 1.363 hectares (based on the department's calculation that the NSW Government paid \$118,103 per hectare on average for the three parcels of land it acquired); equals
- \$29,839,026 (GST exclusive) for 12.26 hectares.⁴⁹
72. The calculation method was intended to underwrite the difference between the department's and the NSW government's valuation of the 1.363 hectares of Leppington Triangle land that was acquired by the NSW government.⁵⁰ As per the finding at paragraph 4.22 of Auditor-General Report No. 9 of 2020–21, the briefing to the financial delegate did not explain that this underwriting was occurring nor did it set out the reasons why this was considered a proper use of public money.

⁴⁶ Auditor-General Report No. 9 of 2020–21, paragraph 3.73. Subsequent to this performance audit, the Department of Finance revised its *Lands Acquisition Framework (RMG 501)* on 26 October 2021 to advise that a full valuation, based on detailed physical inspection and all relevant enquiries, 'should always be undertaken where a high level of assurance is required, such as for the purposes of the purchase of an interest in land'.

⁴⁷ Auditor-General Report No. 9 of 2020–21, paragraph 21.

⁴⁸ Auditor-General Report No. 9 of 2020–21, footnote 22 on page 37. See also Australian National Audit Office, answer to question number 175, Budget Estimates 2020–21, Senate Finance and Public Administration Committee.

⁴⁹ Auditor-General Report No. 9 of 2020–21, paragraphs 4.24–4.32.

⁵⁰ Auditor-General Report No. 9 of 2020–21, Table 2.1 on page 30 and paragraph 4.22.

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73. The audit concluded more broadly that:

Decision-makers were not appropriately advised on the land acquisition. Formal briefings omitted relevant information, such as: the purchase price; that the price exceeded all known market valuations of the land (see Figure S.1); and the method of acquisition.⁵¹

NSW government's comments on the valuation approach

74. Consistent with the department's instructions, the draft restricted assessment valuation report was submitted to the department by the valuer on 2 August 2017 to provide the opportunity for the department and LPC to provide comments. Prior to finalising the draft, the department learned that the NSW government's Roads and Maritimes Services (RMS) had already undertaken a valuation of the Leppington Triangle. The department shared its draft Restricted Assessment valuation report with the RMS on 3 September 2017.⁵²

75. As set out in Auditor-General Report No. 9 of 2020–21, at 2:45pm on 20 September 2017, RMS in turn shared its February 2017 valuation report of the Leppington Triangle⁵³ with the department. The RMS procured report valued the land at \$50 per square metre, which equates to 23 per cent of the \$220 per square metre indicated by the department's draft Restricted Assessment valuation. The RMS also provided the following 'general comments' on the department's draft valuation report:

- The [sales] evidence considered, specifically, above \$200/m2 have 'options' and are not completed transactions.
- In instances of purchasing a property subject to terms, a copy of the full sales contract/deed should be obtained to appropriately ascertain the terms and condition of the sale.
- No commentary in consideration of possible effect of Australian Noise Exposure Forecast (ANEF) contours in regard to development potential has been mentioned. ...
- To ensure consistency is maintained, it is suggested the respective valuers of DIRD and RMS meet to discuss the difference in assessments.⁵⁴

76. As also set out in Auditor-General Report No. 9 of 2020–21, at 4:28pm on 20 September 2017, the department met with LPC. The departmental File Note of the meeting includes: 'Discussed methodology for valuation – no problems noted, will confirm it is ok to finalise the draft.' The department did not take up RMS's suggestions and advised the valuer on 26 September 2017 to finalise the draft without amendment.⁵⁵

Fair value versus market value

77. Submission 13 asserts that 'the valuer was compelled to comply with valuation standards that required a 'market value' assessment', that the 'fair value standard does not require a consideration or future probable zoning changes' and that the 'fair value standard acts to limit the assessment to current conditions'. As outlined above, however, the valuer had raised concerns that the instruction from the department 'does not reflect the typical IVSC Definition of Market Value' and the valuer had been specifically instructed 'not to carry out the usual enquiries and investigations associated with a market valuation' (see paragraphs 63 and 65). Further, fair value under Australian Accounting

⁵¹ Auditor-General Report No. 9 of 2020–21, paragraph 9.

⁵² Auditor-General Report No. 9 of 2020–21, paragraphs 3.78–3.79.

⁵³ This valuation report states that it was prepared in accordance with definitions and Valuation Applications of the International Valuation Standards Council (IVSC) and endorsed by the Australian Property Institute together with the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* and provided a market value based on the highest and best use of the asset that may not necessarily be the existing use. The highest and best use applied by this valuer was grazing.

⁵⁴ Auditor-General Report No. 9 of 2020–21, paragraph 3.80.

⁵⁵ Auditor-General Report No. 9 of 2020–21, paragraphs 3.81–3.83.

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Standard AASB 13 *Fair Value Measurement* and market value under the International Valuation Standards Council (IVSC) standards are based on the same premise.⁵⁶

78. Paragraph 29 of AASB 13 requires:

Highest and best use is determined from the perspective of market participants, even if the entity intends a different use. However, an entity's current use of a non-financial asset is presumed to be its highest and best use unless market or other factors suggest that a different use by market participants would maximise the value of the asset. [emphasis added]

79. The intent of this requirement is explained in the basis for conclusions to the standard (paragraph BC69 IFRS 13):

Some respondents asked for further guidance about whether a use that is legally permissible must be legal at the measurement date, or if, for example, future changes in legislation can be taken into account. The IASB concluded that a use of an asset does not need to be legal at the measurement date, but must not be legally prohibited in the jurisdiction (eg if the government of a particular country has prohibited building or development in a protected area, the highest and best use of the land in that area could not be to develop it for industrial use). The illustrative examples that accompany IFRS 13 show how an asset can be zoned for a particular use at the measurement date, but how a fair value measurement can assume a different zoning if market participants would do so (incorporating the cost to convert the asset and obtain that different zoning permission, including the risk that such permission would not be granted). [emphasis added]

80. In terms of practical application, the Department of Finance has not issued guidance, however NSW Treasury does provide the following guidance⁵⁷:

To determine highest and best use, this Policy requires that agencies consider the asset's present purpose and any other more beneficial purpose that the asset may be applied 'at no remote period'. A practical guide to this is that an alternative use should only be considered to be feasible where it can be demonstrated that it can be achieved in the relatively near future (say the next five years) rather than at some remote future time. Changes to restrictions on an asset can be assumed if market participants would do so. However, the risk that the change would not be granted or approved would also need to be taken into account in the same way as a market participant would take it into account. For example IFRS 13, para BC69 notes that a fair value measurement can assume a different zoning if market participants would do so. IFRS 13 illustrates this in Illustrative Example 2 (para IE7-IE8). However, IFRS 13, para BC69 qualifies this by stating that the risk that a different zoning permission would not be granted would need to be taken into account when considering the highest and best use. [emphasis added]

81. This is similar to the concept in 'market value' under IVSC standards which require the valuer to assess the likelihood that restrictions will change in the future.⁵⁸

⁵⁶ Auditor-General Report No. 9 of 2020–21, paragraph 4.66. This paragraph includes reference to a statement made in Colliers' valuation report, with the full statement being 'Having regard to the definitions of Fair Value and Market Value, we consider the terms to be interchangeable in so far as they are used within our report'. The basis of Colliers' statement, including discussion of the market value and fair value definitions, appears in section 1.4 of the redacted version of the valuation report, which the Department of Infrastructure has released on its website under the *Freedom of Information Act 1982* (disclosure date 29 November 2021, FOI 22-083). A redacted version of the Jones Lange Lassalle valuation report is also included in that set of 'FOI 22-083' documents at [foi-22-083-docs-1-4-combined-redacted-final.pdf](https://www.foi-22-083-docs-1-4-combined-redacted-final.pdf) (infrastructure.gov.au)

⁵⁷ See: [Tsy Policy Paper TPP14-01 Accounting Policy: Valuation of Physical Non-Current Assets at Fair Value](https://www.nsw.gov.au) ([nsw.gov.au](https://www.nsw.gov.au)), section 4.1 at page 11.

⁵⁸ International Valuation Standards IVS 104 *Bases of Value*, paragraph 140.5(b). In Auditor-General Report No. 9 of 2020–21, the footnote to paragraph 3.43 references the Concepts Fundamental to Generally Accepted Valuation Principles section of the Australia and New Zealand Valuation and Property Standards (the Concepts statement) with respect to the requirement in valuation standards that the highest and best use of a property being valued must be

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82. The standard of value employed by each valuation is clearly stated in Auditor-General Report No. 9 of 2020–21. For example, it is clear from the labelling in Figure S:1 above that of the nine valuations compared against the purchase price: five were 'market value'; two were 'fair value'; one was 'statutory value'; and one was 'rental value'.
83. The first of the two 'fair value' assessments was procured by Infrastructure from Jones Lange Lassalle (JLL). It valued the fair value of the land asset at \$3.1 million. Due to the substantial difference between the Leppington Triangle's purchase price and its fair value, the department procured a second valuation opinion from Colliers International (Colliers). Colliers valued the land at \$4 million, which supported the valuation advised by JLL. The fair value for financial reporting purposes was set at \$3.1 million by the department.⁵⁹
84. As quoted in the Auditor-General Report, the department's documented explanations for the substantial difference between the purchase price (and associated 'MJD valuation' figure) and the land asset's value were that:
- 'The difference has been attributed to a substantial premium paid to purchase the land based on an unwilling seller who had previously successfully challenged a compulsory acquisition declaration' (paragraph 4.67); and
 - 'While we do note that there is a price difference between the MJD valuation and the JLL and Colliers valuations, and that each valuation is premised on a 'highest and best use' approach, the MJD valuation is based on different valuation premises than those in the JLL and Colliers reports. In particular, the Colliers and JLL reports assume that rural/agricultural uses are reflective of the parcel's highest and best use, while MJD was instructed to value on the basis of a highest and best use that included industrial use' (paragraph 4.80).

NSW Valuer General

85. The department's records of its due diligence inquiries did not demonstrate that it had engaged with the NSW Valuer General to obtain relevant insights into real estate values, for example when the department was providing instructions as to which comparator properties should be used.
86. During the conduct of the performance audit, the ANAO referred to NSW Valuer General factsheets, standards and policies for the valuation system.⁶⁰ The audit evidence examined included the NSW Valuer General's notice of compensation for the NSW government's portion of the Leppington Triangle and the associated determination of compensation setting out the valuations that underpinned it.⁶¹ As outlined in the Auditor-General Report:
- The NSW government paid \$148,691 for the market value of the 1.363 hectares.⁶² This equates to \$109,091 per hectare.⁶³
 - The price paid by the Australian Government for its portion of the Leppington Triangle equates to \$2,433,852 per hectare.⁶⁴

legally permissible. This Concepts statement was also referenced in the ANAO response to Senate Finance and Public Administration Legislation Committee 2021-22 Budget Estimates Question on Notice 54. The ANAO acknowledges that the Concepts statement has been superseded. The current standard, International Valuation Standards IVS 104 paragraph 140.5, includes this requirement.

⁵⁹ Auditor-General Report No. 9 of 2020–21, paragraphs 4.64–4.65.

⁶⁰ As reflected in, for example, footnote 32 and paragraph 3.52 of Auditor-General Report No. 9 of 2020–21.

⁶¹ Auditor-General Report No. 9 of 2020–21, paragraph 4.29.

⁶² Auditor-General Report No. 9 of 2020–21, Table 2.1 on page 30. Other types of compensation in addition to the market value of the land may have been paid.

⁶³ Auditor-General Report No. 9 of 2020–21, paragraphs 4.29 and 4.81.

⁶⁴ Auditor-General Report No. 9 of 2020–21, paragraphs 4.58 and 4.81.

87. One of the written questions from Parliament to the ANAO referenced the NSW Valuer General report *Review of the impact of rezoning potentiality on land values*, February 2021.⁶⁵ The question compared an 'adopted a rate of \$220/m2 for 2018' from the Valuer General's report for land located in the Aerotropolis Core precinct with the adopted rate of \$220/m2 from the department's valuation of the Leppington Triangle. The ANAO notes that the Leppington Triangle land is not located in, nor surrounded by, the Aerotropolis Core precinct.
88. The ANAO's response to the question included the following information:
- The table on page 27 of the Valuer General's Report outlines the 'adopted a rate of \$220/m2 for 2018' being the hypothetical value for a two hectare property in the Aerotropolis Core precinct.
- The hypothetical value for a 10 hectare property in the Agribusiness precinct (where the Leppington Triangle is located) was \$35/m2 for 2018, as per the table on page 37 of the Valuer General's Report ...⁶⁶
89. Attachment E of submission 13 compares the \$243/m2 price the department paid for its 12.26 hectare portion of the Leppington Triangle in 2018 against the rates presented in the NSW Valuer General⁶⁷ report for five properties sold privately in 2018. Attachment E says that these properties are 'proximate to and with similar attributes to the Leppington Triangle'. Two of these properties were in the Badgerys Creek precinct and the other three were in the enterprise-zoned portion of the Aerotropolis Core. The ANAO notes that the Leppington Triangle is not located in, nor surrounded by, either of these precincts.⁶⁸
90. For the year 2018, the NSW Valuer General report presented, for the:
- Agribusiness precinct area, a hypothetical 10 hectare property value of \$35/m2;
 - mixed-use-zoned portion of the Aerotropolis Core precinct area, a hypothetical 2 hectare property value of \$175/m2;
 - enterprise-zoned portion of the Aerotropolis Core precinct area, a hypothetical 2 hectare property value of \$220/m2; and
 - Badgerys Creek precinct area, a hypothetical 2 hectare property value of \$240/m2.⁶⁹
91. The aim of the NSW Valuer General report was 'to understand the impact on land value of the potentiality for rezoning over an extended period up until the rezoning occurs'.⁷⁰ A map in the report's summary of findings showed the indicative hypothetical market value changes in each precinct from 2016 to 2020. The 'Land Value Percentage Change' range identified on the map for the three precincts of interest were:
- Agribusiness precinct area, 0–50 per cent change;
 - Aerotropolis Core precinct area, 50–100 per cent change; and
 - Badgerys Creek precinct area, 200–250 per cent change.⁷¹

⁶⁵ [Statewide report 1 July 2017 land values \(nsw.gov.au\)](https://www.nsw.gov.au/land-values).

⁶⁶ Australian National Audit Office, answer to question number 55, Budget Estimates 2021–22, Senate Finance and Public Administration Legislation Committee.

⁶⁷ The ANAO notes that the NSW Valuer General report referenced in Attachment E to Submission 13 was released in 2021 and therefore was not available at the time of the ANAO audit..

⁶⁸ For benchmarking against these sales to be beneficial, the prices could be adjusted to account for the differences, but this was not done. In regards to benchmarking, see Auditor-General Report No. 9 of 2020–21, paragraph 4.57.

⁶⁹ NSW Valuer General report, *Review of the impact of rezoning potentiality on land values*, February 2021, tables on pages 24, 27, 30 and 37.

⁷⁰ NSW Valuer General report, *Review of the impact of rezoning potentiality on land values*, February 2021, page 2.

⁷¹ NSW Valuer General report, *Review of the impact of rezoning potentiality on land values*, February 2021, Figure 24 on page 41.

Land planning and zoning

92. Submission 13 asserts that 'the Auditor-General mistakenly placed the Leppington Triangle in an agriculture precinct, which would mistakenly infer a lower value for the property' and that 'at the time of the Commonwealth's acquisition of the Leppington Triangle in 2018, the statutory planning documents of all three levels of government treated the Leppington Triangle as a future part of the airport, not as an agriculture precinct.'
93. This matter was considered by the ANAO as it arose as part of the audit's examination of whether appropriate consideration was given by the department to the costs and benefits of acquiring the land early.
94. There were four references to the *Land Use and Infrastructure Implementation Plan for the Western Sydney Aerotropolis* (LUIIP)⁷² (publicly released in August 2018) in the Auditor-General Report. In the context of examining the department's instructions to the valuer, which referenced the Western Sydney Priority Growth Area (WSPGA), the ANAO observed that 'it eventuated that the proposed WSPGA was replaced by the Western Sydney Aerotropolis' and that 'in the proposed land use and implementation plan released in August 2018, the Leppington Triangle was located in the 'Agriculture and Agribusiness' precinct'.⁷³ This commentary was not part of the basis for the audit conclusion in Chapter 3 as to whether an appropriate approach was taken to valuing the land. It was made clear that the land was valued in July 2017 and that the plan was publicly released in August 2018.⁷⁴
95. The other three references in the Auditor-General Report were made in the context of examining the department's advice to decision-makers on the reasons for acquiring the land early — some 32 years in advance of expected need.⁷⁵ The first of these references appeared in a footnote to the sentence 'The land was legislatively protected from developments that may adversely impact the future design or operation of the airport, making deferral a viable option' as follows:

On 1 July 2009, Ministerial direction 5.8 under the then Section 117(2) of the *Environmental Planning and Assessment Act 1979 (NSW)* was issued to avoid incompatible development in the vicinity of any future second Sydney Airport at Badgerys Creek. Direction 5.8 was updated and reissued on 14 April 2016, and was then revoked on 20 August 2018 when Ministerial direction 7.8 under Section 9.1(2) of the Act took effect. The objective of direction 7.8 was to ensure development was consistent with the Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan. The planning prohibitions of direction 5.8, and then direction 7.8, applied to the Leppington Triangle land.⁷⁶

96. The other two references were made in direct reference to the department's following reason advocating for early acquisition: 'the scarcity of land on or around the airport site would result in further increases in property values, with future announcements about the airport and broader land use planning also expected to result in upwards price movements of airport land and surrounding properties'.⁷⁷ Specifically, the ANAO observed:

- in Chapter 2, which examined the land acquisition strategy, that:

The reason was negated by the department's approach of requiring that the land be valued as 'industrial' instead of 'agricultural' so that 'the future value of any re-zoning of the land could be assessed in the present'. This approach to valuation was not outlined in the LPC Strategy nor elsewhere approved by a decision-maker.

⁷² See: [Western Sydney Aerotropolis Stage 1 Plan for Exhibition 08 2018.pdf \(amazonaws.com\)](#), page 62 released in August 2018

⁷³ Auditor-General Report No. 9 of 2020–21, paragraph 3.49.

⁷⁴ Auditor-General Report No. 9 of 2020–21, paragraphs 3.49 and 3.72.

⁷⁵ Auditor-General Report No. 9 of 2020–21, paragraphs 2.37–2.38.

⁷⁶ Auditor-General Report No. 9 of 2020–21, paragraph 2.37 and associated footnote 15.

⁷⁷ Auditor-General Report No. 9 of 2020–21, Table 2.1 on page 30 and paragraph 4.76.

The department was consulted on draft land use plans and was aware in advance of purchase that a future announcement about land use planning would place the Leppington Triangle in the 'Agriculture and Agribusiness' precinct of the Western Sydney Aerotropolis, rather than in the more commercial 'Aerotropolis Core'. Also that the land use planning would introduce more stringent land development controls around the airport.

The May and June 2016 drafts of the LPC Strategy stated that 'because of the location of the Triangle very close to the eastern end of the southern runway any development of the Triangle will be very constrained thereby reducing significantly any potential increase in land value as a result of the airport development'. This statement did not appear in the finalised October 2016 LPC Strategy⁷⁸; and

- in Chapter 4, which examined the advice to decision-makers (including, in this case the minute that comprised the department's October 2019 review of the land transaction process), that:

The minute did not advise that, 20 days after the land was purchased, the Land Use and Infrastructure Implementation Plan for the Western Sydney Aerotropolis was released to the public. It placed the Leppington Triangle in the 'Agriculture and Agribusiness' precinct and not in the more commercial 'Aerotropolis Core'. The Western Sydney Unit was aware of the proposed land use well in advance of the acquisition, having provided input to the development of the Plan.⁷⁹

97. In conducting the audit the ANAO considered departmental records. These included the purchase valuation obtained by the department, that considered the location of the land. The related analysis addressed the placement of the land both in terms of planning precincts and for zoning purposes.
98. As outlined in paragraph 2.5 of the Auditor-General Report, the Leppington Triangle has not been declared part of the airport site and it is not part of the airport lease granted to WSA Co Limited for the purpose of constructing and operating the new airport. The Leppington Triangle is not needed for the stage 1 development of the airport and subsequent stages have not been designed or approved.
99. As the ANAO stated in paragraph 3.44 of the Auditor-General Report, at the time of acquisition the Leppington Triangle land was zoned 'SP1 Special Purposes'. The SP1 zoning restricted the land from development that may adversely impact the future operation of the airport.
100. In determining compensation, the *Lands Acquisition Act 1989* provides that the limitation imposed by the SP1 zoning is to be disregarded and it shall be assumed that the land was subject only to the limitations that would have been likely had it not been affected by the planning restriction.⁸⁰
101. The stated professional advice from the valuer in the valuation report obtained by the department for the purposes of the acquisition was that, if the Leppington Triangle had not been zoned SP1, then 'it would have been zoned RU1 Primary Production in line with surrounding lands'.⁸¹ The ANAO also examined the advice provided on the location of the Triangle land to decision makers and the Minister, including the department's advice of 31 July 2018 to the Minister which stated that the valuer:

valued the land on the basis that it was "industrial" even though, as it stood, the land was zoned "agricultural".⁸²

⁷⁸ Auditor-General Report No. 9 of 2020–21, Table 2.1 on page 30.

⁷⁹ Auditor-General Report No. 9 of 2020–21, paragraph 4.77.

⁸⁰ Auditor-General Report No. 9 of 2020–21, paragraphs 3.44–3.45. The related provision in the *Lands Acquisition Act 1989* (section 59) is for land acquired by compulsory process, which was the approved acquisition strategy at the time the valuation report was procured. As per paragraph 15 of the Auditor-General Report, the approach was changed, without further documented approval, to be an acquisition by agreement with the owner so as to achieve a target date of 31 July 2018.

⁸¹ Auditor-General Report No. 9 of 2020–21, paragraph 3.46. The quote also appears in the FOI 22-114 version of the valuation report at paragraph 10.3.3 on page 17.

⁸² The Minister tabled in the Senate a consolidated set of the ten written departmental briefs on the acquisition of the Leppington Triangle land that are referenced in paragraph 4.1 of the Auditor-General report. For the complete

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102. The departmental records show that the Leppington Triangle abuts the western boundary of the airport site and the LUIIP states that the 'Agriculture and Agribusiness Precinct will skirt the western edge of the Airport'.⁸³
103. The August 2018 LUIIP was intended as a high-level plan, with a more detailed Structure Plan to be released. The 'Western Sydney Aerotropolis Plan' (WSAP)⁸⁴ was released for public comment in December 2019 and its more detailed maps of the precincts placed the Leppington Triangle land clearly in the renamed 'Agribusiness' precinct and not in the Aerotropolis Core.
104. The audit report therefore outlined that the Leppington Triangle would fall in the 'Agriculture and Agribusiness' precinct, which was subsequently renamed the 'Agribusiness' precinct as:
 - the Leppington Triangle has not been declared part of the airport site⁸⁵;
 - the Land Use and Infrastructure Implementation Plan:
 - did not place the Leppington Triangle in the more commercial 'Aerotropolis Core'; and
 - stated that the 'Agriculture and Agribusiness Precinct will skirt the western edge of the Airport'.⁸⁶
105. The ANAO has not said that the LUIIP changed the Leppington Triangle's zoning from 'SP1 Special Purposes'.
106. Submission 13's comments in relation to zoning and precincts appear to be based on a variety of maps whereas the ANAO also considered the written content of the referenced plans as well as the contemporaneous records of the department. The department did not dispute the paragraphs stating that the Leppington Triangle was placed in the 'Agriculture and Agribusiness' precinct during the course of the audit.

departmental advice of 31 July 2018, see pages 79–82 of the consolidated set as tabled on 3 August 2021 in response to Senate Order for the Production of Documents No. 862 agreed to 12 November 2020, at [OPD 862.pdf;fileType=application/pdf \(aph.gov.au\)](#)

⁸³ See page 64 of the LUIIP and Australian National Audit Office answer to question number 52, Budget Estimates 2021–22, Senate Finance and Public Administration Legislation Committee.

⁸⁴ See: [Western Sydney Aerotropolis Plan 2019 Draft for public comment \(shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com\)](#), released for public comment in December 2019 (which was during the course of the ANAO audit).

⁸⁵ Auditor-General Report No. 9 of 2020–21, paragraph 2.5.

⁸⁶ See page 64 of the LUIIP and Australian National Audit Office answer to question number 52, Budget Estimates 2021–22, Senate Finance and Public Administration Legislation Committee.

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